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STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO
ENVIRONMENTAL MANAGEMENT DEPARTMENT

In the Matter of the Notice and Order
Pertaining to:

DIXON PIT LANDFILL;

Super Pallet Recycling, Corp. and
Jasmail Singh/Five Star Auto and
Towing,

Appellants.

OAH No. 2008 100665

**SUPER PALLET RECYCLING
CORPORATION'S BRIEF ON APPEAL
TO CALIFORNIA INTEGRATED
WASTE MANAGEMENT BOARD
(PRC 45030)**

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RECORD ON APPEAL

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NO.	DESCRIPTION	DATE
1	Appellant's Hearing Exhibit 1 - Guy Kalwani/Super Pallet and Jasmail Singh/Five Star's Reply to Response to Statement of Issues	12/31/08
2	Hearing Exhibit 2 - Letter from BJ Bergmann of AES North, Inc. to Sharon Zimmerman at the County of Sacramento Env. Health Division	10/10/08
3	Appellant's Hearing Exhibit 3 - Letter from Mark Pruner to Catherine Frink Re: Conflict of Interest	3/23/09
4	Appellant Five Star's Hearing Exhibit 4 - Jasmail Singh's Opening Administrative Hearing Brief	3/23/09
5	Appellant Five Star's Hearing Exhibit 5 – Letter dated 4/17/09 from Patrick Markham to ALJ	4/17/09
6	Appellant Five Star's Hearing Exhibit 6 – Letter dated 4/22/09 from Donald Wanland to ALJ	4/22/09
7	Appellant Five Star's Hearing Exhibit 7 - Respondent Five Star Auto & Towing, Inc.'s Opening Brief Re: Relevance of Issues	4/29/09
8	SPRC's Hearing Exhibit 8 - Super Pallet Recycling Corporation's Brief in Support of Motion to Exclude Irrelevant Evidence and Witnesses	5/04/09
9	SPRC's Hearing Exhibit 9 -Super Pallet Recycling Corporation's Supplemental Statement of Issues	5/04/09
10	Appellant Five Star's Hearing Exhibit 10 – Five Star's Reply to SPRC's Response to Five Star's Opening Brief Re: Relevance of Issues	5/06/09
11	Appellant Five Star's Hearing Exhibit 11 –Five Star's Reply to County of Sacramento's Response to Five Star's Brief	5/06/09
12	SPRC's Hearing Exhibit 12 – Super Pallet's Reply Re: Statement of Issues	5/06/09
101	SPRC's Hearing Exhibit 101 - LFG Probe Sets	
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103	SPRC's Hearing Exhibit 103 - Addition of 6 Infill LFG Extraction Wells	

104	SPRC's Hearing Exhibit 104 - Addition of 2 Wells	
105	SPRC's Hearing Exhibit 105 - Typical 3 Probe Set-cut-away	
106	SPRC's Hearing Exhibit 106 - Letter from Jasmail Singh/five Star to Wendy Hoffspiegel of the County Dated 9/18/2007	9/18/07
107	SPRC's Hearing Exhibit 107 - Letter from Jasmail Singh/five Star to Wendy Hoffspiegel of the County Dated 10/25/2007	10/25/07
108	SPRC's Hearing Exhibit 108 - Methane Monitoring Data Form Dated 1/24/2009	1/24/09
109	SPRC's Hearing Exhibit 109 - Methane Monitoring Data Form Dated 2/09/2009	2/09/09
110	SPRC's Hearing Exhibit 110 - Methane Monitoring Data Form Dated 3/07/2009	3/07/09
111	SPRC's Hearing Exhibit 111 - Methane Monitoring Data Form Dated 3/09/2009	3/09/09
112	SPRC's Hearing Exhibit 112 - Methane Monitoring Data Form Dated 3/12/2009	3/12/09
113	SPRC's Hearing Exhibit 113 - Closed Disposal Site Inspection Report Dated 11/27/2007	11/27/07
114	SPRC's Hearing Exhibit 114 - Closed Disposal Site Inspection Report Dated 9/30/2008	9/30/08
115	SPRC's Hearing Exhibit 115 - Dixon Pit Self Gas Monitoring after N&O Issued 9/30/2008	9/30/08
116	SPRC's Hearing Exhibit 116 - 2009 Average - Gas Monitoring Data	
117	SPRC's Hearing Exhibit 117 - Email from B.J. Bergmann to Gyan Kalwani Dated 11/17/08	11/17/08
118	SPRC's Hearing Exhibit 118 - Email from Mark Pruner to John Reed Dated 12/22/08	12/22/08
119	SPRC's Hearing Exhibit 119 - Letter from Sharon Zimmerman of the County to B.J. Bergmann Dated 1/23/09	1/23/09
120	SPRC's Hearing Exhibit 120 - Email from Lis Todd of Sacramento Co. Environmental Management	11/17/08

	Department to Mark Pruner Dated 11/17/08	
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127	SPRC's Hearing Exhibit 127 - Table C-1 Subsurface Ace Methane Gas Monitoring Record Dixon Pit Landfill 2/11/09	2/11/09
128	SPRC's Hearing Exhibit 128 - Letter from Jasmail Singh to Lisa Todd dated 12/28/09	12/08/09
129	SPRC's Hearing Exhibit 129 - Letter from Jeffrey Bergmann to Sharon Zimmerman dated 2/20/09	2/20/09
130	SPRC's Hearing Exhibit 130 - Letter from Jeffrey Bergmann to Patrice Webb dated 5/8/09	5/08/09
131	SPRC's Hearing Exhibit 131 - Letter from Lisa Todd to Jeffrey Bergmann dated 8/16/07	8/16/07
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133	Appellant's Closing Brief	7/13/09
	ALJ Decision dated 7/24/09	7/24/09
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A	County's Hearing Exhibit A - Hearing Notice/OAH Transmissions	10/23/08
B	County's Hearing Exhibit B - Grant Deed/parcel Description/map	6/20/2006
C	County's Hearing Exhibit C - Solid Waste Facilities Permit	7/02/07
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E	County's Hearing Exhibit E - Response to Statement of Issues	10/31/08
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J	County's Hearing Exhibit J - Email and Letters: Change of Ownership; Owner/operator Status; Request to Meet; Operator's Plan to Address Methane Gas Concentrations and Submittal of Plan Set for Phase Iv Infill Well Expansion	
K	County's Hearing Exhibit K - Dixon Pit Landfill Gas Plan	
L	County's Hearing Exhibit L - Excerpts from Title 27 (Gas Regulations)	
M	County's Hearing Exhibit M - Public Resources Code	
N	County's Hearing Exhibit N - Dixon Pit Gas Monitoring 2007 Probe 10.2: Lea Inspections	
O	County's Hearing Exhibit O - Dixon Pit Gas Monitoring 2008 Probe 10.2: Lea Inspections	
P	County's Hearing Exhibit P – Dixon Pit Gas Monitoring 2008 Probe 10.2: Lea Inspections	
Q	County's Hearing Exhibit Q – Order Granting Continuance March 23, 2009	3/23/09
R	County's Hearing Exhibit R – Letter to parties dated April 21, 2009	4/21/09

S	County's Hearing Exhibit S – Status Conference Order dated 4/22/09	4/22/09
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U	County's Hearing Exhibit U – May 8, 2009 Order Re: Relevance of Issues	5/08/09
V	County's Hearing Exhibit V - Landfill Gas Monitoring Plan for Dixon Pit Landfill	
W	County's Hearing Exhibit W - Closed Disposal Site Inspection Report, 4/20/09	4/20/09
X	County's Hearing Exhibit X - Dixon Pit Staff Self Gas Monitoring after Notice & Order Issued September 30, 2008	9/30/08
Y	County's Hearing Exhibit Y - Letter from Lisa Todd, LEA Program Supervisor, to John Reed, Deputy County Counsel, Dated 5/8/09	5/08/09
Z	County's Hearing Exhibit Z - Notice and Order: Dixon Pit Landfill	
AA	County's Hearing Exhibit AA - Penalty Order for Dixon Pit Landfill	
BB	County's Hearing Exhibit BB - Letter from Claire Van Dam/Robert Ryan to Mark Pruner Dated 5/25/07	
CC	County's Hearing Exhibit CC – Plans submitted to LEA Decemer 28, 2007	
DD	County's Hearing Exhibit DD - Data Log Sheet: Perimeter Monitoring Probe and Gas Extraction Well Monitoring, 5/26/09	
EE	County's Hearing Exhibit EE - Resume of Gino Yektag	
FF	County of Sacramento post Hearing Brief	6/26/09
GG	County of Sacramento's Reply Brief	7/20/09

written decision. The basis of the appeal is set forth below.

I. BRIEF STATEMENT OF THE ISSUES

This matter arises from post-closure maintenance of the Dixon Pit Landfill (the “Landfill”) located in Elk Grove, California. The Local Enforcement Agency (“LEA”) issued a Notice and Order dated September 30, 2008 (the “N&O”)² to the Owner of record, Five Star Auto and Towing, Inc. (“Owner” or “Five Star”), and the Operator of record, Super Pallet Recycling Corporation (“Super Pallet” or “Operator of Record”).³ Super Pallet is the former owner of the Landfill which was sold to Five Star in 2006.⁴

The Order is a Compliance Order which requires the Owner/Operator to take certain actions by specified dates. 14 CCR 18304.1 (a)(3). The order is not final. An “order becomes final when” the notice and order has been reviewed by the “hearing officer and the hearing process has been completed pursuant to PRC sections 44307 & 44310, and any subsequent appeals to the board or Superior Court have been resolved pursuant to PRC sections 4503-45042.” 14 CCR 18304.2.

The N&O required Owner/Operator to continuously control methane gas levels at probe 10-2 and all other probes so as not to exceed the regulatory limit of 5% methane by volume in air. The compliance date was “immediately and continuously.” The N&O further required the installation of two new infill gas extraction wells and to have both

² Exhibit F, September 30, 2008 N&O.

³ The company president of Super Pallet, Gyan Kalwani, was named in his representative capacity, but he is neither owner nor operator and not a party to this appeal.

⁴ Although Super Pallet remains the operator of record for post closure purposes, Five Star is not only the owner of the facility but also the operator in fact. Five Star filed an Operations Plan “for Inert Debris,” in December 2006 that stated in part, “This Operations Plan has been prepared by AES North, Inc. for, and at the request of, Five Star Auto and Towing, Inc. (hereinafter also “FSA” or “Operator”)...” The plan was approved and Five Star was issued an operating permit for crushing waste concrete on the property. Five Star cannot benefit from its land ownership and then deny the duties arising from land ownership. Civil Code Section 1589. Super Pallet remains as operator of record solely because Five Star has refused to execute the paper work for providing security for the obligations of the post-closure plan.

wells be operational by November 17, 2009. Lastly, the N&O required “any other corrective measures” to the gas collection system necessary to abate the gas violation at probe 10-2 by November 17, 2009.

Super Pallet and Five Star both timely appealed the N&O.⁵ Super Pallet has not had possession of the site since 2006.⁶ Five Star owns, has sole possession, and has operated the Dixon Pit since 2006, during which time, Five Star has become the discharger of record for CRWQCB and has undertaken the self monitoring and other activities on site. See attached letter from Todd del Fratte, CRWQCB, to Donald Wanland dated July 1, 2009, **Attachment A**. Five Star physically possesses and operates the site, but technically has not become the operator, by refusing to accept the financial assurances established by Super Pallet. Super Pallet presently is seeking to take the property back by foreclosure, but must complete a court case in order to do so. See Order on Receiver with Findings of Facts issued by Superior Court dated September 10, 2009, **Attachment B**. However, Super Pallet does not operate the landfill, and has not operated the landfill since 2006. Super Pallet defends the property on this appeal to preserve the property in which it holds a beneficial interest as holder of the deed of trust. See **Attachment B**.

Super Pallet pursued the appeal, on its own behalf, and solely to achieve an order by the LEA with which a party can reasonably comply.⁷ Super Pallet does not dispute the LEA’s effort to ensure regulatory compliance, but simply disputes how the LEA is

⁵ Exhibit D, Notice of Appeal.

⁶ Exhibit 124, Grant Deed to Five Star.

⁷ Five Star neither withdrew nor participated in the ALJ appeal. They have not appealed the ALJ decision, which is now final as to the property owner. See RT (5/11/09), pp. 5-10; Wanland at RT (5/11/09), page 9:17 “we are not withdrawing and we are not agreeing to a joint defense either.” At page 11:3, Wanland stated “At least my perception of the Court’s or your decision, is there is joint and several liability and so ... Five Star is stuck ... in regard to whatever SPRC’s defense is ...” At page 8:17, Wanland states, “...we are going to leave today these proceedings.”

going about it. Five Star did not participate in the appeal hearing, and in the same way, refused to comply with EMD, until Super Pallet recently caused the appointment of a receiver solely to comply with EMD.⁸ The court order appointing the receiver is a public record of which the board may take judicial notice. A copy is attached hereto as **Attachment B.**

Super Pallet appeals herein on the grounds that the N&O orders installation of extraction wells, but the order is moot since the extraction wells have been installed. The wells were installed since the LEA demanded they be installed, even though the evidence showed they were unnecessary or detrimental to the gas extraction system as a whole. Additionally, the vague requirement that the land owner must bring probe 10-2 into compliance “immediately and continuously” does not constitute a “time schedule according to which a facility or site shall be brought into compliance” within the meaning of PRC 45011. The compliance date of “immediately” is unreasonable, and coupled with the N&O requirement that “any other corrective measures” is constitutionally vague, makes the order unreasonable. Again, it does not advise Owner/Operator of what it has to do in order comply with the N&O. The LEA responds the owner must bring the gas concentrations at probe 10-2 in 2007 and 2008 so they are *never* in excess of 5% of methane by volume of air, perfection is not achievable, especially when perfection must be achieved immediately. Finally, as a matter of form, the only issue on appeal is probe 10-2, and the N&O needs to so state since the other 29 site probes all are in compliance.

II. BRIEF STATEMENT OF THE FACTUAL BASIS FOR THE APPEAL

The Landfill is a “Closed Disposal Site” pursuant to PRC section 40115.5.⁹ It has

⁸ Exhibit U, Order of ALJ dated May 8, 2009.

⁹ Exhibit K, Landfill Gas Monitoring Plan.

ceased to accept solid waste and is closed in accordance with the applicable ordinances. The Landfill is closed pursuant to an approved Final Closure and Post Closure Maintenance Plan (the "Plan"). The design engineer of the Plan is AES North, Inc., and the Plan is sealed by Jeffrey A. Bergmann, a registered Civil Engineer. The Plan includes a system to prevent methane gas from breaking the plane of the property in a concentration greater than 5% by volume of air. See 27 CCR 20921. The landfill gas control system has three parts: the network of gas extraction wells to pull the methane gas out of the ground; collection piping to move the gas to the flare; and the flare which disposes of the methane gas by burning it off. The system must extract gas containing a minimum concentration of methane by volume (according to Bergmann 15%) or the flare will not burn and the system shuts down.¹⁰

The efficacy of the landfill gas control system in meeting the 27 CCR standard for perimeter subsurface methane concentration is measured by 10 sets of 3 probes each (30 total probes), located near the perimeter of the site for testing the subsurface methane gas concentration.¹¹ Out of 30 probes on the Landfill, only one probe has tested out above the 5% limit for methane since 2006, probe 10-2.¹² This is the intermediate level probe measuring gas at the location of probe set LFG-10.

The landfill gas control system extracts and burns methane which is generated by a dynamic biological system. The methane generated by this living system can, and does, change over time, and it does so in a manner that cannot be predicted with 100% certainty. Any problems are addressed on a step-by-step basis until resolved. In order to

¹⁰ Bergmann, RT (5/12/09) 41:19-54:20.

¹¹ The probe and well layout is depicted in three exhibits, numbers 101-105.

¹² Zimmerman, RT (5/11/09) p. 29:2-7; Bergmann RT (5/12/09) 17:3-23:23; Emslander RT (5/27/09) p. 8:7-14, "...I don't think I've had more than a .1 reading on any probe." Exhibits 101-105; N&O dated September 30, 2008, Exhibit F.

address the issues with probe 10-2, Owner/Operator made improvements to the gas control system including re-grading portions of the property and replacing collection pipes and gas control valves; installed the two new gas extraction wells that are described in the N&O; and has conducted daily testing of probe 10-2.¹³ Throughout the process of dealing with probe 10-2 gas levels, Super Pallet has relied on the expertise of its registered civil engineer.

After installation of the two new extraction wells, the design engineer did modeling which indicated that the projected methane gas from two additional extraction wells would not produce enough gas to burn the flare. This has proven to be true since bringing the wells online causes the flare to shut down due to insufficient levels of methane in the system.¹⁴ Once the flare shuts down, the entire gas collection system shuts down and levels of methane at the perimeter rise. Although the installation of the wells was originally proposed by Five Star, installation of the wells has proven to be an unsuccessful and very costly effort to control gas levels at probe 10-2. Instead, the corrections to the pipe collection system seem to have solved the issue at probe 10-2.¹⁵

After the noted improvements to the system (re-grading, replacement of collection pipes and replacement of control valves), daily self monitoring has revealed great improvements to gas level readings at probe 10-2. There are still occasional readings that exceed the 5% threshold and the Owner/Operator has been undertaking additional work with the flare to resolve this issue.

III. ARGUMENT

This is an appeal from the ALJ Ruling upholding enforcement of an N&O issued

¹³ See Bergmann RT (5/12/09) pp. 7-173, and especially p. 60:7-86:9.

¹⁴ Bergmann RT (5/12/09) 86:4-13; Emslander RT (5/27/09) p. 116:1-119:12.

¹⁵ Bergmann RT (5/12/09) p. 82:4-22.

to the legal operator Super Pallet¹⁶ and the property owner, Five Star. The Notice and Order (“N&O”) can be divided into 3 sections.¹⁷ First, the LEA claims the Owner/Operator of the Landfill violated two regulations: (1) the LEA claims the methane gas concentration at probe 10-2 “must be continuously controlled so as not to exceed the regulatory limit of 5 percent by volume of air.” Citing 27 CCR 20921. (2) the LEA states the Owner/Operator is to “implement the approved plans for the installation of two new infill gas extraction wells to control gas at the permitted boundary of the landfill and have both wells to be operational.” The N&O states “in addition, implement any other corrective measures to the gas collection system necessary to abate the gas violation at probe 10-2.” The compliance date with respect to item 1 is “immediately and continuously.” The compliance date with respect to items number 2 and 2.1 is November 17, 2008.

The second portion of the N&O is entitled “Additional Required Actions.” The additional required actions state that “*because* gas monitoring of gas probe 10-2 on June 19, 2007, was performed with a...back up instrument...and *because* respondent has repeatedly failed to control landfill gas at the property boundary,” the respondent is ordered to provide significant and extensive documentation anytime the gas monitoring device described in the landfill gas monitoring plan (LGMP) is being repaired. The second additional action requires respondent to continue to monitor gas probe 10-2 weekly. Further “required” actions include amending the LGMP to state that the

¹⁶ The Owner contracted to receive the financial assurances, and thus be both Owner and Operator, but refuses to accept those assurances today. This left Super Pallet out of possession, and unable to effect compliance, and effectively an “operator” in absentia until litigation between Super Pallet and Five Star concludes where Super Pallet is seeking to force Five Star to accept its contractual responsibility. For purposes of waste water discharge requirements, Five Star has applied for, and an order issued, establishing Five Star as both Owner and Operator/Discharger. Five Star does not appeal, and is subject to enforcement action, but the LEA has taken no action on the N&O against Five Star.

¹⁷ Exhibit F, N&O.

monitoring will be increased to weekly. The amendment described in the “additional actions” requires monitoring of all probes weekly even though the only probe that is at issue is probe 10-2.

A. The ALJ Erred by Upholding an Order to Install Wells That Have Already Been Installed.

The N&O was issued on September 30, 2008, and by December 1, 2008, prior to the appeal that began in March of 2009, the two new extraction wells required by the N&O had been installed.¹⁸ The wells would have been installed earlier, but the project engineer spent time demonstrating the wells were unneeded.¹⁹ The LEA ignored him.²⁰ The owner chose to comply, rather than fight the LEA.²¹ The LEA persisted in seeking an order that the wells be installed, even though this has already been accomplished. The portion of the N&O requiring installation of the extraction wells is moot and should be stricken from the N&O. Although the Administrative Law Judge made a finding that the wells required by the N&O had been installed as of December 1, 2008, the judge upheld this portion of the N&O. The written decision acknowledges the current status of the site but only focuses on the “reasonableness and appropriateness” of the N&O at the time it was issued, and not on the fact that the order if confirmed requires a moot act-to install wells that are already in place. The LEA does not dispute this fact. In its post hearing brief, the LEA states “the evidence clearly shows the two new wells are now installed.”²²

¹⁸ The ALJ and the LEA agree the wells were installed by December 2008, even though the LEA had been told by the project engineer before the N&O issued that the additional wells would not reduce the gas concentrations at probe 10-2.

¹⁹ Exhibit 117, emails to and from BJ Bergmann and Sharon Zimmerman, page 117-2 and 3 dated 9/26/08 set forth the technical data explaining why new wells would not generate sufficient gas to operate the flare.

²⁰ Exhibit 117-1 and 2.

²¹ See Decision of ALJ dated July 24, 2009, finding the wells were installed.

²² Exhibit FF, LEA Post Hearing Brief, page 10:20.

B. The Installation of Two New Operational Extraction Wells Complies with the N&O. The LEA Demand the Wells be Operated When They Will Impede the Rest of the System is Unreasonable.

The LEA inspection report dated 12/22/2008 confirms that the wells were installed and that “according to the design engineer the wells are “...operational but will not be operated.”²³ The LEA takes exception with this approach, and contends the Owner must turn the valve to operate the wells. The owner is not appealing the N&O to avoid turning the valve as the LEA contends. If it was that easy, there would be no appeal. The problem is the wells cannot be operated with the system, and the order that they be operated will defeat the system. The new wells produce insufficient gas to burn, and the low level of gas production impairs the ability to burn the system flare. The LEA retorts that the entire system should be re-worked to permit the unneeded wells to produce insufficient levels of gas. The LEA acknowledges the physical impossibility of its order, but claims the owner needs re-design the system and implement the re-design to comply with the order. The fundamental problem is this is a backwards approach. The LEA has become wedded to the wrong solution, and demands the owner find a way to perform the wrong solution, rather than fix the problem. Super Pallet appeals the N&O and the ALJ decision that the new wells be operated, to the detriment of the system.

Gino Yektag agreed the landfill is running out of gas.²⁴ The only tests to determine the volume of gas produced by the new wells proved the wells do not produce enough gas to burn.²⁵ As a consequence, the valve cannot be turned without defeating

²³ Exhibit W, Inspection Report.

²⁴ Yektag, RT (6/9/09) 46:5-22; the LEA relied extensively on Yektag’s opinion regarding changes to the approved plan, but Yektag has done no testing or monitoring on this facility (RT, p. 49:13).

²⁵ The only production tests in evidence were by Bergmann, and it confirmed the low gas volume is insufficient to burn the flare. The LEA demanded the system be modified in ways not authorized by the LGMP.

the operation of the flare.²⁶ The project engineer B.J. Bergmann testified the two extraction wells referenced in the October 25, 2007 letter were installed.²⁷ Bergmann testified that he notified the LEA before the N&O was issued that upon further modeling and following the 2007 letters by Jasmail Singh, that he concluded the wells were not needed to control gas emissions and, in fact, would negatively impact the entire LFG control system.

Before addressing the above, we address whether the N&O is moot because it does not require that the wells be “operated,” but requires the wells be operational, which they are. The Decision states that the “core issue on appeal is whether the installation of infill gas extraction wells IGE-7 and IGE-8 was necessary in order to control methane gas concentration at probe 10-2;” however, the decision does not make any determination with regard to that issue. The Decision discusses evidence presented on the impact of the wells on the gas control system but then fails to actually make a finding as to whether or not the term “operational” means “operating” or whether it would be reasonable and appropriate to require the operation of wells that cause the entire gas control system to fail.

Bergmann testified that after conducting modeling, he concluded there was a 99% probability, that the new wells would not be needed to control the methane levels at probe 10-2. He concluded that the gas production and concurrent introduction of more air into the system from the new wells would prevent the overall system from producing enough gas to burn in the flare. The mathematical modeling predicted that the two new extraction wells will not produce more than approximately 10% methane by volume, or at

²⁶ Five Star employee and methane tester Jim Emslander testified the wells were brought on line to the detriment of the system operation; Bergmann confirmed this testimony.

²⁷ See Exhibits 106 and 107 and J7-J13.

least 5% less than needed to burn; therefore, there would not be a sufficient concentration of methane in the new extraction wells to integrate them into the existing gas extraction network. Bergmann further testified that the wells tested out in compliance with his modeling. Field measurement of the methane concentrations actually yielded by these new extraction wells has been in the range of 8.5% to 10.5% methane by volume which was insufficient to keep the flare burning.²⁸ Additionally, lay witness Jim Emslander testified were brought on line (which required turning a lever), but the *gas production was so low that that the system would not burn the flare*. Emslander testified they were unable to light the flare because of low gas levels. The LEA offered **no evidence** of any field tests to refute Appellant's evidence that the operation of the two new wells is not possible due to low gas levels which cause the entire system to shut down.

Gino Yektag, LEA's expert, testified that he did not do any modeling, but asserted generally that a field with more wells will draw away more gas from the perimeter.²⁹ He agreed that Dixon Pit is running out of gas, and he testified he had no idea what production was from the new wells. He did no modeling to determine if the new wells could be operated. Yektag testified that the flare must be burning in order for the gas to be constantly extracted from within the fill. Yektag further testified that if there is not enough gas to keep the flare burning then the flare would shut down, the pumps would shut off and the extraction wells would not function; the entire system would shut down. Yektag, also admitted in his testimony that he did not do any modeling to determine the appropriateness of the two additional gas extraction wells, Nos. 7 & 8, and that he was not in a position to either agree or disagree with the project engineer as to whether or not

²⁸ Bergmann, RT (5/12/09) pp. 85:20-86:1

²⁹ Yektag, RT (6/9/09) p. 49:13.

sufficient gas would be generated by the two new additional wells to burn the flare.³⁰ No evidence was presented of any field testing by LEA on the new wells or their effect on the LFG system.

Since the evidence demonstrates that the operation of the two new wells is detrimental to the whole system and, in fact, prevents the entire LFG control system from operating, it is reasonable for the wells to remain operational but not operated. The wells were installed and are operational as specifically required by provision #2; therefore, provision #2 of the N&O is moot. The only reason the LEA seeks operation of the wells is not to solve a problem, but to base a later action to punish the owner/operator.

C. The Decision of the ALJ Errs by Applying the Order to 29 of the 30 Probe Sets That Were Never at Issue.

The Administrative Law Judge erred in not striking references to probes other than 10-2 in the N&O. The N&O was issued based on methane levels at probe 10-2 only. The other 29 probes are not a part of these proceedings and any reference to other probes should be stricken. The LEA offered historical evidence of alleged past misconduct, but most of the evidence relates to probes and wells that are entirely irrelevant to the singular probe 10-2 that is at issue here.³¹

D. The Order That “Any Other Corrective Measures” be Taken Before The Nature of Such Measures Could Be Determined Lacks Basic Due Process Fairness.

The Administrative Law Judge erred by not striking the N&O requirement of the implementation of “any other corrective measures” necessary to abate the gas violation at

³⁰ Yektag offered some irrelevant evidence that there are mechanisms for supplementing the flare with propane to keep the flare burning if insufficient gas is produced on-site and generally mentioned that passive systems which do not involve a flare are also possible. However, this testimony is irrelevant to the N&O at issue. The wells were installed and are operational as required by the N&O, therefore, provision #2 is moot. There is nothing in the N&O regarding redesigning the flare.

³¹ See Exhibits Z and AA.

probe 10-2 as unreasonable, vague and overly broad. The requirement of “any other corrective measures” does not provide Super Pallet with adequate notice of what is required to comply.

The N&O deprived the owner of any ability to comply by requiring “any other corrective measures” be taken on the same compliance date as the installation of the wells. The installation of the wells was required by November 17, 2008. At the same time, “any other corrective measures” were required by the same compliance date even though the need for “any other corrective measures” would not be known until the wells were installed and tested. Control of methane gas requires site specific methods and systems which must be approved by the LEA and CIWMB before being implemented. Setting the compliance date for installation of the wells and “any other measures” on the same day is unreasonable and inappropriate because it does not allow time for determination of need or the development, approval or implementation of “any other measures.”

According to the LEA, a landfill would be in violation of the emission limitation statutes the **instant** a flare went out or a pump went down. While this may be technically true, this instantaneous violation scenario dismisses the reality that 1) the gas control system is a mechanical system, therefore, mechanical failure or maintenance and repair situations are naturally part of the ongoing process of controlling gas emissions; 2) as the landfill ages or site conditions otherwise change over time, the gas control system may also need to change; and 3) the monitoring program provides the landfill and the LEA with notice that modifications, adjustments or repairs are needed. The production of LFG is an organic process and the control of LFG by way of a mechanical process will

naturally require modifications as conditions change. Both engineers, B.J. Bergmann and Gino Yektag agreed to all of the above. In fact, Yektag testified this landfill is "running out of gas."

The statutes and the implementing regulations incorporate the element of reasonableness by allowing timetables for compliance; requiring submission of and approval of LFG systems and modifications to/by the LEA and CIWMB; and by reporting requirements which enable both the LEA and owner/operator to confirm the effectiveness of the LFG system and/or to signal the need for modifications. The statutes and implementing regulations recognize that although emissions exceeding the 5% limit may be a technical violation, the control of gas emissions does not occur and cannot occur instantaneously. The statutes and implementing regulations do not call for LEA corrective action or civil penalties **unless and until a valid final order** has been violated and the owner/operator **has been given a reasonable opportunity to bring the landfill into compliance** with the statutes. Pub. Res. Code Sections 45010 & 45011.³² As acknowledged by the LEA in its Post Hearing Brief, pg.4, lines 11-24, the enforcement agency is authorized to issue orders **"...establishing a time schedule according to which the facility or site shall be brought into compliance with this division."** (Emphasis added.)

Additionally, the initial gas control system plan that is submitted to the LEA and

³² Pub.Res. Code Section 45010 states in pertinent part: "... (a) It is the intent of the Legislature that administrative civil penalties should be imposed on the operators of solid waste facilities in a judicious manner and should only be imposed after all feasible efforts have been made by enforcement agencies to provide proper notice of violations to alleged violators as well as a **reasonable opportunity to bring solid waste facilities into compliance** with this division." (Emphasis added.)

Pub.Res. Code Section 45011 states in pertinent part: "(a) If an enforcement agency determines that a solid waste facility or disposal site, is in violation of this division...the enforcement agency may issue an order **establishing a time schedule according to which the facility or site shall be brought into compliance** with this division...The order may also provide for a civil penalty...if compliance is not achieved in accordance with that time schedule." (Emphasis added.)

approved after substantial review by CIWMB for is just that...a plan. It is designed by experts retained by the permittee and evaluated and commented on by the LEA and CIWMB experts before being approved by the LEA and CIWMB. Whether the plan works or whether it needs modification can only be determined by way of testing and monitoring after the fact, i.e. once it is operational. Each site is different and requires site specific efforts. Once testing reveals that emissions are not being properly controlled, changes and modifications to the LFG system can be addressed.

Despite the fact that the statutes provide for a time schedule to bring a facility into compliance, according to the LEA in this action, there is no such thing as time for modifications, adjustments, or repairs since exceeding the emissions limit for even one second is a violation. In other words, if your approved system does not control emissions when it goes online, or as the landfill ages, or if you shut down the flare to make repairs, you are automatically subject to an enforcement action.³³ Obviously, this extreme position negates any element of reasonableness which is incorporated by the statutes. The LEA's "time schedule" for provision #1 is "immediately."³⁴ "Immediately" is not a "time schedule" within which to bring probe 10-2 into compliance and "immediately" is not a "reasonable opportunity" to bring probe 10-2 into compliance.

Super Pallet agrees that pursuant to the Public Resources Code statutes and regulations, owners/operators of closed landfills are required to control the migration of landfill gases, specifically methane. The statutes require the submission of a plan for a

³³ Exhibit FF, LEA Post Hearing Brief, pg.3, lines 1-5: "An operator is not allowed to exceed 5% whenever the flare on the control system goes down. Nor is an operator allowed to exceed 5% due to the control system needing "tweaking" or repairs. The law requires that the system that is designed actually works and that the operator will keep it in the appropriate state repair so that it does work, at all times." (LEA) Post Hearing Brief, pg.2, lines 22-23.

³⁴ Exhibit F-5.

LFG control system designed by a qualified engineer and a monitoring plan to periodically conduct tests to determine whether the system is working properly. The design of the gas control system and the monitoring plan are part of an overall post closure plan that is approved by both CIWMB and the LEA. Dixon Pit Landfill submitted a design for a gas control system and a monitoring plan which were approved by LEA and CIWMB as part of the Landfill Gas Monitoring Plan (LGMP). The gas control system was constructed and installed as designed in 1999. As is evidenced by LEA's inspection records and Dixon Pit Landfill's own gas monitoring records, extraction probe 10-2 is **the only probe out of 30 probes monitored on the site with any recent** history of methane emissions exceeding the statutory 5% by volume limit. The emission readings at 10-2 are the only focus of the N&O. As further evidenced by LEA's records and Dixon Pit Landfill's own records, Dixon Pit Landfill has been continuously addressing the issue with various remedies recommended by its engineer (re-grading, replacement of pipes, drilling new wells, replacement of a critical system timer and replacement of other flare controls). Since "immediate" compliance makes a violation inevitable and does not constitute a "time schedule" or a "reasonable opportunity" as required by Sections 45010 and 45011, provision #1 of the N&O is improper and should be revoked. Additionally and as will be discussed in more detail below, probe 10-2 is now in compliance with emission standards; therefore, provision #1 (Gas Monitoring and Control) is moot and should not be finalized.

IV. CONCLUSION

Super Pallet respectfully requests that the N&O be revoked, and the LEA be directed to re-issue any N&O to (1) eliminate any order requiring the owner/operator to

install wells that are already installed, and will not solve the alleged problem, (2) to state clearly what is required of the LEA in order for the owner/operator to comply, (3) set a reasonable time for compliance given the nature of the alleged problem, and the agreed stepped process at arriving at a solution, and (4) to acknowledge the lack of any non-compliant readings from March 2009 to the hearing date, other than limited readings explained by equipment malfunction or barometric conditions, demonstrate the work done in late 2008 and early 2009 solve any issue.³⁵ Further, the LEA contends that readings compliant with the approved LGMP do not comply with the LEA, and in that sense, are contending the CIWMB approved plan cannot be relied on by the operator as the governing document. Additionally, the LEA contends it has the enforcement authority to require changes to the system without submitting the changes to the CIWMB for approval, and this is an action in excess of the police power of the LEA because it usurps the authority of the CIWMB.

The appeal is respectfully submitted.

Dated: October 26, 2009

JACOBSON MARKHAM, L.L.P.



By: PATRICK T. MARKHAM
Attorneys for Appellant SUPER PALLET
RECYCLING CORP.

³⁵ Emslander testified no readings exceeded 5% since March 7, 2009 to the date of his testimony on May 27, 2009 after the substantial work was completed, other than readings caused by a temporary failure of the flare or barometric pressure. Exhibit 110, Emslander RT (5/27/09) 23:5-25:9. Bergmann provided an explanation for the few readings from the date the work was completed in early 2009 to March 2009 that exceeded 5%. Exhibit 130.

ATTACHMENT A

SUPER PALLET RECYCLING CORP.'S BRIEF ON APPEAL TO CALIFORNIA WAST MANAGEMENT BOARD



California Regional Water Quality Control Board
Central Valley Region

Karl E. Longley, ScD, P.E., Chair



Arnold
Schwarzenegger
Governor

Linda S. Adams
Secretary for
Environmental
Protection

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>

1 July 2009

Mr. Donald M. Wanland, Jr.
Wanland & Spaulding
705 University Avenue
Sacramento, California 95825

DIXON PIT LANDFILL, SACRAMENTO COUNTY

In your letter dated 23 June 2009, you asked the Central Valley Regional Water Quality Control Board to provide documentation regarding the responsibility for compliance activities at the Dixon Pit Landfill. Please find enclosed a letter dated 25 September 2006 from Jasmail Singh notifying the Central Valley Water Board of a change of ownership. Also attached to the 25 September 2006 letter was Form E-1-77, Application for Solid Waste facility Permit/Waste Discharge Requirements, requesting a owner, operator, address, and/or facility name change as shown in Part 3, Facility Information. This Form was signed by Mr. Jasmail Singh and dated 25 September 2006. Based on these documents, the Central Valley Water Board adopted Order No. R5-2006-0118 (enclosed) updating the facility's Waste Discharge Requirements (WDRs) Order No. 5-00-186 to name Five Star Towing as the owner and operator. Pursuant to the updated WDRs, therefore, Five Star Towing is responsible for compliance activities at the landfill.

Please contact me directly at (916) 464-4737, if you have any questions.

TODD A. DEL FRATE
Engineering Geologist
Compliance & Enforcement
Title 27 and Non 15 Units

Enclosure(s) 25 September 2006 Letter
Form E-1-77 Application for Solid Waste Facility Permit/WDRs
Order No. R5-2006-0118

cc: Patrice Webb, Sacramento County Environmental Health Department
Mark Pruner, 1206 Q Street, Suite 1, Sacramento
B.J. Bergman, AES North, Inc., Nevada City
Patrick T. Markham, Jacobson Markham, LLP
Jasmail Singh, Five Star Towing, Inc., Elk Grove

WLB

Five Star Auto & Towing

10473 E. Stockton Blvd. • Elk Grove, CA 95624 • Phone (916) 685-7717

September 25, 2006

California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive St.#200
Rancho Cordova, Ca. 95670-6114

Re: Change of ownership Dixon Pit landfill

Good Day Mr. Brattain,

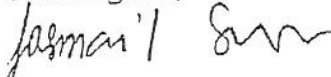
I have completed the application for ownership change for the Dixon Pit landfill. First let me thank you for your cooperation and informational packet that was enclosed in your correspondence. We, at Five Star towing, will strive to implement and stay within the regulatory requirements of the aforementioned WDR's, MRP and SPRR's.

We will continue to use Kleinfelder engineering for the surface and sub-surface water monitoring. They are a respected firm that has an established rapport with the C.R.W.Q.C.B. Mr. Tim Crandall, P.E. will oversee this requirement and report directly to the said Board. Mr. Crandall is also the CQA officer in charge of the Phase IV closure.

During this transitional period; Mr. Kenneth D. Holder, who is familiar with the site, will assist us. If you have any questions please contact Mr. Holder or myself.

Thank you for your time and consideration in this business matter. We look forward to a mutually amiable business relationship with you and the C.R.W.Q.C.B.

Best Regards,



Mr. Jassy Singh
Five Star Towing, Inc.

RECEIVED
SACRAMENTO
CVRWOCB
06 SEP 27 AM 9:31

STATE OF CALIFORNIA
 CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
 CALIFORNIA WATER QUALITY CONTROL BOARD

APPLICATION FOR SOLID WASTE FACILITY PERMIT/WASTE DISCHARGE REQUIREMENTS

18 E-1-77 (Rev. 8-04)

This form has been developed for multiple use. It is the transmittal sheet for documents required to be submitted to the appropriate agency. Please refer to the attached instructions for definitions of terms and for completing this application form in a complete and correct manner.

OFFICIAL USE ONLY

NUMBER:	FILING FEE:	RECEIPT NUMBER:	DATE RECEIVED:
ACCEPTED:	DATE REJECTED:	ACCEPTANCE DATE OF INCOMPLETE APPLICATION:	DATE DUE:

1.1. GENERAL INFORMATION

A. ENFORCEMENT AGENCY: <u>Sacramento County EMD</u>	B. COUNTY: <u>Sacramento</u>
--	---------------------------------

TYPE OF APPLICATION (Check one box only):

1. NEW SWFP and/or WDRS ☐ 4. PERMIT REVIEW
2. REVISION OF SWFP and/or WDRS ☐ 5. AMENDMENT OF APPLICATION
3. EXEMPTION and/or WAIVER ☒ 6. RFP/ROW/DIST AMENDMENTS

1.2. FACILITY DESCRIPTION

NAME OF FACILITY:
Dixon Pit Landfill

CATION OF FACILITY:
8973 Elk Grove Florid Road Elk Grove, Ca. 95624

LEGAL ADDRESS OR LOCATION AND ZIP CODE:

LATITUDE AND LONGITUDE:

LEGAL DESCRIPTION OF PERMITTED BOUNDARY BY SECTION, TOWNSHIP, RANGE, BASE, AND MERIDIAN, IF SURVEYED:

TYPE OF ACTIVITY: (Check applicable boxes):

1. DISPOSAL ☐ 3. TRANSFORMATION ☒ 5. OTHER (describe): Inert Material
2. TYPE: ☐ 4. TRANSFER/PROCESSING FACILITY
3. COMPOSTING ☐ 4. TRANSFER/PROCESSING FACILITY
4. TYPE: ☐ CHECK HERE IF RECYCLABLE MATERIALS ARE RECOVERED PRIOR TO TRANSFER/PROCESSING.

CONFORMANCE FINDING INFORMATION (CIWMP):

1. FACILITY IS IDENTIFIED IN (Check one):	DATE OF DOCUMENT	PAGE #
<input type="checkbox"/> SITING ELEMENT		
<input type="checkbox"/> NONDISPOSAL FACILITY EL	DATE OF DOCUMENT	PAGE #

2. FACILITY IS NOT REQUIRED TO BE IDENTIFIED IN SITING ELEMENT OR NONDISPOSAL FACILITY ELEMENT

TYPE OF PERMITTED WASTES TO BE RECEIVED: (Check applicable boxes):

1. AGRICULTURAL ☐ 6. CONSTRUCTION/DEMOLITION ☐ 11. LIQUIDS
2. ASBESTOS ☐ Friable ☐ Non-friable ☐ 7. CONTAMINATED SOILS ☐ 12. MIXED/MUNICIPAL SOLID WASTE
3. ASH ☐ 8. DEAD ANIMALS ☐ 13. SEWAGE SLUDGE
- AUTO SHREDDER ☐ 9. INDUSTRIAL ☐ 14. TIRES
- ☒ 10. INERT ☐ 15. OTHER (describe):
5. COMPOSTABLE MATERIAL (describe):

FACILITY INFORMATION

PROPOSED CHANGE (Check applicable box(es)):

DESIGN (describe):

OPERATION (describe):

OWNER, OPERATOR, ADDRESS, AND/OR FACILITY NAME CHANGE (describe):

Five Star Towing, Inc. 8973 EIKHANE/7500 RT. 510 GADSDEN, AL 36041

OTHER (describe):

FACILITY INFORMATION:

FORMATION APPLICABLE TO ALL FACILITIES

PEAK DAILY TONNAGE OR CUBIC YARDS

1) DISPOSAL/TRANSFER (unit)

2) OTHER (unit)

DAILY DESIGN TONNAGE (TPD)

FACILITY SIZE (acres)

PEAK TRAFFIC VOLUME PER DAY (vpd)

DAYS AND HOURS OF OPERATION

Monday - Saturday 7:00am to 5:00pm

ADDITIONAL INFO. REQUIRED FOR COMPOSTING FACILITIES ONLY

SITE STORAGE CAPACITY (cu yds)

ADDITIONAL INFORMATION REQUIRED FOR LANDFILLS ONLY

AVERAGE DAILY TONNAGE (TPD)

SITE CAPACITY CURRENTLY PERMITTED (Airspace) (cu yds)

SITE CAPACITY PROPOSED (Airspace) (cu yds)

SITE CAPACITY USED TO DATE (Airspace) (cu yds)

SITE CAPACITY REMAINING (Airspace) (cu yds)

DATE OF CAPACITY INFORMATION (Date) (See Instructions):

LAST PHYSICAL SITE SURVEY (Date)

ESTIMATED CLOSURE DATE (month and year)

DISPOSAL FOOTPRINT (acres)

SITE CAPACITY PLANNED (cu yds)

1. (i) IN-PLACE WASTE DENSITY (lbs of waste per cu yd of waste)

AND

(ii) WASTE-TO-COVER RATIO (Estimated) (v:v)

OR

2. AIRSPACE UTILIZATION FACTOR (tons of waste per cu yd of landfill airspace)

Part 4. SOURCE OF WATER SUPPLY (Check applicable boxes)

A. MUNICIPAL OR UTILITY SERVICE:

B. INDIVIDUAL (wells):

C. SURFACE SUPPLY:

1. NAME OF STREAM, LAKE, ETC.:

2. TYPE OF WATER RIGHTS:

☐ RIPARIAN☐ APPROPRIATION

3. STATE PERMIT OR LICENSE NUMBER, IF APPLICABLE:

Already on file

5. COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) (Check applicable boxes)

CHECK BOX(ES) IF ENVIRONMENTAL DOCUMENT WAS OR WILL BE PREPARED FOR THIS PROJECT AND PROVIDE THE STATE CLEARINGHOUSE NUMBER (SCH#):

☐ ENVIRONMENTAL IMPACT REPORT (EIR) SCH# _____☐ NEGATIVE DECLARATION (ND)/MITIGATED NEGATIVE DECLARATION (MND) SCH# _____☐ ADDENDUM TO (Identify environmental document) _____ SCH# _____

IF ENVIRONMENTAL DOCUMENT(S) WAS NOT PREPARED, PLEASE PROVIDE THE FOLLOWING INFORMATION:

☐ CATEGORICAL/STATUTORY EXEMPTION (CE/SE)
EXEMPTION TYPE _____

GUIDELINE # _____

Part 6. LIST OF ATTACHMENTS (Fill in the date for each document checked)

REQUIRED WITH ALL APPLICATION SUBMITTALS:

RF/ITD _____

LOCAL USE/PLANNING PERMITS _____

LOCATION MAP _____

MITIGATION MONITORING IMPLEMENTATION SCHEDULE _____

☐ ENVIRONMENTAL DOCUMENT(S):☐ EIR _____☐ MND/ND _____☐ EXEMPTION _____☐ ADDENDUM _____

ADDITIONAL REQUIRED DOCUMENTS FOR LANDFILLS ONLY:

OPERATING LIABILITY FINANCIAL MECHANISM _____

☐ FINANCIAL RESPONSIBILITY DOCUMENTATION _____

CLOSURE/POST CLOSURE MAINTENANCE PLAN _____

☐ LANDFILL CAPACITY SURVEY RESULTS (see instructions) _____☐ PRELIMINARY _____☐ FINAL _____

IF APPLICABLE:

☐ PORT OF WASTE DISCHARGE _____☐ DEPT. OF HEALTH SERVICES PERMIT _____

CONTRACT AGREEMENTS _____

☐ SWAT (Air and water) _____

STORMWATER PERMIT APPLICATION _____

☐ WETLANDS PERMITS _____

NPDES PERMIT APPLICATION _____

☐ VERIFICATION OF FIRE DISTRICT COMPLIANCE _____

OTHER _____

Part 7. OWNER INFORMATION (For disposal site, If operator is different from land owner, attach lease or other agreement)

TYPE OF BUSINESS:

☐ SOLE PROPRIETORSHIP☐ PARTNERSHIP☒ CORPORATION☐ GOVERNMENT AGENCY

OWNER(S) OF LAND

(Name):

Five STAR Towing, Inc.

SSN OR TAX ID #

77-0645676

ADDRESS, CITY, STATE, ZIP

8973 Elk Grove Florin Road
Elk Grove, Ca. 95624

TELEPHONE #:

(916) 685-7717

FAX #:

(916) 685-4114

E-MAIL ADDRESS:

CONTACT PERSON (Print Name):

JASSY Singh

Jasmal

(To be consistent
w/next page)

18. OPERATOR INFORMATION (For disposal site, if operator is different from land owner, attach lease or other agreement)TYPE OF BUSINESS:
SOLE PROPRIETORSHIP☐ PARTNERSHIP☒ CORPORATION☐ GOVERNMENT AGENCY

FACILITY OPERATOR(S)

a):

ADDRESS, CITY, STATE, ZIP

Five Star Towing, Inc.
8973 EIK Grove Florin Rd.
EIK GROVE, Ca. 95624

SSN OR TAX ID #:

77-0645676

TELEPHONE #:

685-7717

FAX #:

685-4114

E-MAIL ADDRESS:

CONTACT PERSON (Print Name):

JASMAIL Singh

ADDRESS WHERE LEGAL NOTICE MAY BE SERVED:

19. SIGNATURE BLOCK

Signature:

I, under penalty of perjury that the information I provided for this application and for any attachments is true and accurate to the best of my knowledge and belief. I am aware that the operator intends to operate a solid waste facility at the site specified above pursuant to this application and understand that I may be responsible for the consequences should the operator fail to meet applicable requirements.

SIGNATURE (LAND OWNER OR AGENT):

PRINTED NAME:

DATE:

Operator:

I, under penalty of perjury that the information contained in this application and all attachments are true and accurate to the best of my knowledge and belief.

SIGNATURE (FACILITY OPERATOR OR AGENT):

PRINTED NAME:

DATE:

10. OTHER (Attach additional sheets to explain any responses that need clarification).

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER NO. R5-2006-0118

CHANGE OF NAME AND/OR OWNERSHIP OF FACILITIES
HAVING WASTE DISCHARGE REQUIREMENTS

The California Regional Water Quality Control Board, Central Valley Region, finds that:

1. The Regional Board Orders listed below are for facilities that have had a change of name and/or ownership since adoption of the Orders.
2. These Orders need to be revised to show the current name and/or ownership of these facilities.
3. The Board has notified each discharger of its intent to amend the Orders by substituting the current name and/or ownership of the facilities.
4. The Board heard and considered all comments pertaining to the proposed change of name and/or ownership of each facility.
5. This action is exempt from provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) in accordance with section 15301, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED, that the following Orders and Resolutions are amended by updating the discharge facility name and/or ownership name and address as shown below:

Order Number	Current Facility Name	Current Owner	New Facility Name	New Owner	New Operator
87-032	Wastewater Treatment Facility Yosemite-Mariposa KOA	Yosemite-Mariposa KOA P.O. Box 545 Midpines, CA 95345	Yosemite-Mariposa KOA Wastewater Treatment Facility 6323 Highway 140 Midpines, CA 95345	Bailey, Fritz 6323 Hwy 140 Midpines, CA 95345	Bailey, Fritz 6323 Hwy 140 Midpines, CA 95345
90-216	Fresno Cogeneration Project 8105 South Lassen Ave. San Joaquin, A 9366	Wellco Services, Inc. P.O. Box 59 San Joaquin, CA 936	Fresno Cogeneration Project 8105 South Lassen Ave. San Joaquin, A 9366	Fresno Cogeneration Project 8105 South Lassen Ave. San Joaquin, A 9366	Wellhead Services, Inc. 650 Bercut Drive, Suite C Sacramento, CA 95814
94-041	Topo Dairy 6721 E. Perrin Rd Manteca, CA 95337	Manuel Teichella 6721 Perrin Rd Manteca, CA 95337	Ed Machado Dairy 6721 Perrin Rd Manteca, CA 95337	Ida Teichella 6721 Perrin Rd Manteca, CA 95337	Ed Machado 11708 E. Moncure Rd Ripon, CA 95366
94-217	Costa Dairy 22578 Henry Miller Ave Los Banos, CA 93635	Manuel B. Costa 22578 Henry Miller Ave. Los Banos, CA 93635	Costa Dairy 22578 W. Henry Miller Ave Los Banos, CA	Guionar Costa 22578 W. Henry Miller Ave Los Banos, CA 93635	Manuel C. Costa 22578 W. Henry Miller Ave Los Banos, CA 93635
95-227	Tomato Processing Plant 1765 Ashby Road Merced, CA 95348	Conopco dba Unilever Best Foods North America	Tomato Processing Plant 1765 Ashby Road	Morning Star, Merced, LLC 724 Main Street Woodland, CA 95695	Same as Owner

ORDER NO.
CHANGE OF NAME/OWNERSHIP

-2-

<u>Order Number</u>	<u>Current Facility Name</u>	<u>Current Owner</u>	<u>New Facility Name</u>	<u>New Owner</u>	<u>New Operator</u>
5-00-046	Golden Oaks Mobile Home Park	Judith Koehler 1425 Garden Hwy Sacramento, CA 95833	Merced, CA 95348	Fred Dewart 219 8 th Street, #4 Marysville, CA 95901	Fred Dewart 219 8 th Street, #4 Marysville, CA 95901
5-00-185	Dixon Pitt Landfill 8973 Elk Grove-Florin Road Elk Grove, CA 95624	Super Pallet Recycling Cooperation 10401 Granline Road Elk Grove, CA 95624	Dixon Pitt Landfill 8973 Elk Grove-Florin Road Elk Grove, CA 95624	Five Star Towing, Inc. 8973 Elk Grove-Florin Road Elk Grove, CA 95624	Five Star Towing, Inc. 8973 Elk Grove-Florin Road Elk Grove, CA 95624
5-01-023	Meat Processing 970 E. Sandy Mush Road Merced, CA 95340	Dairymen's Meat Processing 970 E. Sandy Mush Road Merced, CA 95340	Yosemite Valley Beef Packing Plant 970 E. Sandy Mush Road Merced, CA 95340	Yosemite Valley Beef Packing Company, Inc. 970 E. Sandy Mush Road Merced, CA 95340	Yosemite Valley Beef Packing Company, Inc. 970 E. Sandy Mush Road Merced, CA 95340

I, PAMELA CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 27 October 2006.


PAMELA CREEDON, Executive Officer

ATTACHMENT B

SUPER PALLET RECYCLING CORP.'S BRIEF ON APPEAL TO CALIFORNIA WAST MANAGEMENT BOARD

Patrick T. Markham, Esq. - Bar No. 114542
JACOBSON MARKHAM, L.L.P.
8950 Cal Center Drive, Suite 210
Sacramento, California 95826
Telephone: (916) 854-5969
Facsimile: (916) 854-5965

FILED
ENDORSED

09 SEP 10 AM 9:18

SACRAMENTO COURTS
DEPT. #53

Attorneys for Plaintiff and Cross-Defendant
SUPER PALLET RECYCLING CORP.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

SUPER PALLET RECYCLING)
CORPORATION, a California corporation,)

Plaintiff,)

v.)

AMARJIT KAUR, an individual; JASMAIL)
SINGH, an individual; FIVE STAR AUTO)
& TOWING, INC., a California corporation;)
and DOES 1-25, inclusive,)

Defendants.)

Case No. 34-2009-00045260

[PROPOSED] ORDER RE:
APPLICATION FOR PRELIMINARY
INJUNCTION AND APPOINTMENT OF
RECEIVER

Date: June 29, 2009
Time: 2:00 PM
Dept.: 53

Judge: Hon. Loren E. McMaster

TO DEFENDANT FIVE STAR AUTO & TOWING, INC. ("FIVE STAR"), a California corporation and SUPER PALLET RECYCLING CORPORATION ("SPRC"):

The Court's June 5, 2009 Order to Show Cause why this Court should not appoint a receiver to take possession of the property located at 8973 Elk Grove Florin Road, a portion of which is commonly known as the "Dixon Pit Landfill," and Order a preliminary injunction pending trial, came on regularly for hearing on June 26, 2009. This Court issued a Tentative Ruling on June 25, 2009, a true and correct copy of which is attached hereto as Exhibit "A," and Defendant timely requested oral argument. Oral argument was re-scheduled by this Court, after agreement by all counsel to June 29, 2009 at 2:00 PM., the Honorable Loren E. McMaster, judge presiding. Plaintiff/Cross-defendant SPRC appeared by counsel Patrick Markham and Defendant/Cross-Complainant FIVE STAR appeared by counsel, Donald

1 M. Wanland, Jr. of The Law Offices of Wanland & Spaulding. This Court considered the moving papers,
2 including the supporting declarations and evidence, and the argument of counsel. The matter was taken
3 under submission, and the court issued a Minute Order on August 5, 2009, which modified and
4 supplemented the Tentative Ruling, a copy of which is attached hereto as Exhibit "B."

5 THE COURT ORDERS AS FOLLOWS:

6 I. EVIDENTIARY OBJECTIONS

7 This Court's Tentative Ruling on the evidentiary objections and request for judicial notice is
8 affirmed as follows:

- 9 "1. Defendant's Evidentiary Objections to the Declaration of Kalwani are sustained
10 as to paragraph 10 only (hearsay) but otherwise overruled.
- 11 2. Defendant's Evidentiary Objections to the Declaration of Markham are overruled.
- 12 3. Defendant's Evidentiary Objections to the Declaration of Bergmann are
13 overruled.
- 14 4. Plaintiff's evidentiary objections to the Declaration of Wanland submitted with
15 the opposition are sustained as to Exhibits Q-V (no supporting declaration) but
16 otherwise overruled.
- 17 5. Plaintiff's evidentiary objections to the Declaration of Jasmail Singh are
18 sustained as to paragraph 11 (no supporting docs/foundation) 17 (opinion re
19 value of property) but otherwise overruled. The evidentiary objections to the
20 Declaration of Kaur are sustained as to paragraph 8 but otherwise overruled.
- 21 6. Plaintiff's Request for Judicial Notice of the Agreement to Mitigation and
22 Monitoring etc. is granted."

23 II. PRELIMINARY INJUNCTION:

24 This Court is persuaded based on the evidence before it that the plaintiff has a probability of
25 success on the merits. The defendant's declarations in support of their offset arguments are not supported
26 by documentary evidence that would have accompanied agreements supporting the offset. The fact
27 defendants have not previously sought rescission or damages of the agreement based on fraudulent
28 inducement of the contract is telling.

29 IT IS HEREBY ORDERED that pending the trial of this action or further order of this
30 Court, DEFENDANT FIVE STAR AUTO & TOWING, INC., a California corporation shall:

- 31 A. Refrain from removing, altering or destroying any and all records, correspondence,

reports, notices or other documents related to environmental testing, compliance with environmental laws and the Agreement to Mitigation Monitoring and Reporting Program for Closure Plan and Post-Closure Maintenance Plan for Dixon Pit dated September 7, 2001, as amended.

B. Comply with all laws, statutes and regulations applicable to the property, including but not limited to, all environmental laws.

C. Comply with the Agreement to Mitigation Monitoring and Reporting Program for Closure Plan and Post-Closure Maintenance Plan for Dixon Pit dated September 7, 2001, as amended.

D. The Court orders SPRC to file a Preliminary Injunction bond of \$100,000 as a condition to the preliminary injunction taking effect.

III. ORDER ON APPLICATION FOR APPOINTMENT OF A RECEIVER

Super Pallet Recycling Corporation ("SPRC") operated the Dixon Pit Landfill for several years before selling the property to Five Star Auto & Towing, Inc.'s ("Five Star") assignors Jasmail Singh and Amarjit Kaur. In 2001 SPRC (Kalwani) and the County entered an "Agreement to Mitigation Monitoring and Reporting Program for Closure Plan and Post Closure Maintenance Plan for Dixon Pit." Defendant had notice of this agreement and agreed to comply with it.

The County of Sacramento Environmental Management Department (EMD) issued a Notice of Action on September 30, 2008 against both SPRC as "Operator" and Five Star as "Owner of the Dixon Pit Landfill, charging them with a history of noncompliant readings re methane gas in 2007 and 2008. The County prevailed against both plaintiff and defendant, and the Notice of Action is currently on appeal.

On May 11, 2009, Five Star informed SPRC that Five Star would "cease all further self-reporting or monitoring activities relating to the Dixon Pit Landfill effective Friday May 15, 2009." Five Star also stated it would be making no further monthly payments to plaintiff "given the large offsetting claims." (See Ex. 2 to Declaration of Markham, letter from Wanland to Markham dated May 11, 2009).

SPRC filed a Complaint on May 29, 2009 for judicial foreclosure, breach of contract and specific performance. On June 5, 2009, SPRC sought the ex parte appointment of receiver. Judge Kenny denied the ex parte appointment, however he issued an OSC re appointment of receiver and a TRO and set the hearing for June 26, 2009.

On June 15, Five Star filed a cross-complaint for rescission and other claims, contending Kalwani defrauded Singh and Kaur in connection with the purchase of the property by not disclosing the extent of the environmental problems at the Dixon Pit Landfill. Singh and Kaur contend that they signed a real estate purchase agreement on December 22, 2005, but that they never received a copy of the agreement they signed that date. Both Singh and Kaur also contend they never signed the Addendum dated

February 22, 2006, which disclosed that the property was a Class 2 land fill and required the buyer to comply with all EMD rules. Defendants also contend that plaintiff agreed to reimburse defendant for costs it has incurred since 2006 in complying with the County's directives regarding the methane emissions on the property, and that such amounts constitute an "offset" to amounts owed under the deed of trust.

The Plaintiff's Request for Appointment of Receiver seeks appointment under CCP 564. CCP 564(a) provides for appointment in any case in which the court is empowered to appoint a receiver. Plaintiff relies on the Civil Code section 2938, which provides the remedy of appointment of a receiver when there is an assignment of rents provision in a deed of trust. CCP 564(b)(9) provides for a receiver in other cases necessary to preserve property. CCP 564(b)(11)) provides for the appointment of a receiver in an action by a secured lender for specific performance of and assignment of rents provision.

CCP 564(c) which provides for a receiver pursuant to Civil Code 2929.5 to enable a secured lender to enter and inspect the real property security for the purpose of determining the existence, location, nature and magnitude of any past or present release of threatened release of any hazardous substance into, onto, beneath or from the real property security. This code section is limited to a right of inspection and prohibits the lender from harassing the borrower or tenant of the property. Under this section, the receiver is required to inspect during normal business hours and shall give no less than 24 hours notice.

The Court adopts the following language from the Tentative Ruling verbatim, with modifications to the last paragraph as the Order of the Court:

Plaintiff also relies on the contractual language of the note/deed of trust which permits appointment of a receiver regardless of whether the security is adequate to secure the indebtedness. However, the plaintiff concedes that the case of *Barclays Bank of California v Superior Court* (1977) 69 Cal.App.3d 593, 602 holds that "...a trust deeds recital that upon default the beneficiary shall be entitled to the appointment of a receiver **is not binding upon the courts.**" (Emphasis added) However, the Court also noted that such recital may have evidentiary weight in the court's determination of whether a receiver is necessary, and that such recital is a rebuttable evidentiary showing of the beneficiary's (SPRC) entitlement to the appointment of a receiver.

SPRC contends it is subject to a potential \$5,000 fine from the EMD for each day of non-compliance under the Notice of Action. SPRC does not contend that its security interest in the property is in jeopardy. Defendant made a large down payment of \$540,000 when it purchased the property in 2006 for 1.2 million. SPRC has presented no evidence that defendant is committing waste on the property or that the property is otherwise in danger of losing its value, other than the fact that the environmental laws are not being complied with.

Five Star contends that the remedy of the receiver is far too drastic, and that in balancing the equities there is no reason why the receiver should be allowed to take over the defendant's towing business.

The Court has balanced the equities and the costs involved in appointing a receiver and has determined it will appoint a receiver to perform the limited tasks under CCP 564(c). The Court rejects defendant's argument that this section does not apply, because the

1 "emission" of methane gas is different from a "release" of methane gas. The statutory
2 language does not limit the relief to cases in which the borrower or tenant is the person
3 releasing the substance. And, because in this case both the plaintiff and the defendant,
4 as operator and owner respectively, are being pursued by the EMD for compliance and
5 penalties, the appointment of a receiver under this section is warranted to protect the
6 plaintiffs rights. The Court also finds that the scope of this receivership adequately
7 addresses the bulk of plaintiffs concerns set forth as undisputed facts in the Reply as
8 Items 1 through 19, most of which relate to the environmental concerns.

9 The Court denies Five Star's request that the bond be in the same amount as the equity
10 in the property (\$540,000) since the Court is not appointing a receiver pursuant to the
11 assignment of rents provision as long as Five Star keeps the payments current.

12 **THIS COURT THEREFORE ORDERS** the appointment of the receiver under CCP §564 (c)
13 as follows:

- 14 1. Mark Len shall be appointed receiver to perform the tasks permitted in CCP
15 Section 564(c) , and the Court authorizes the receiver to investigate and report
16 to the court within 30 days whether the Defendant has complied with the terms
17 of the Preliminary Injunction and the conditions of this Order. The report shall
18 include any efforts by Defendant to comply.
- 19 2. The parties disagree as to who is to pay for the receiver. This issue was not fully
20 addressed at the hearing. The proposed red-lined order seeks to put the burden
21 entirely on the defendant. However, since the plaintiff still appears to bear some
22 responsibility for complying with the environmental laws as prior owner, and
23 the purpose of the receiver is to ensure compliance with the environmental laws,
24 the Court will require the parties to pay equally for the receiver, and each shall
25 deposit \$10,000 into an account with the Court. Such deposit shall be made no
26 later than 15 days after the effective date of this Order. The receiver's
27 compensation shall be \$250 per hour, plus any direct and indirect costs of
28 performing the responsibilities in this order.
3. The Court orders a Receiver bond of \$50,000.

IT IS FURTHER ORDERED that this Court adopts its Tentative Ruling denying appointment
of the Receiver in part on conditions as follows:

The application is denied insofar as it seeks appointment of a receiver to take over the
business of Five Star Auto Towing under CCP 564(a) and Civil Code 2938, 564(b)(9)
and 564(b)(11). However, the denial under those sections is without prejudice and is

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1 conditioned upon Five Star bringing current the obligation under the note/deed of trust
2 and continue to make all interest payments under the note/deed of trust pending the trial
3 of this action. The payments shall be made to Plaintiff. The Defendant is ordered to
4 take all steps required to bring its tax liability current, and shall commence such steps
5 within 30 days of the date the formal order is signed.

6 IT IS FURTHER ORDERED that the matter shall be continued for 30 days from the date this
7 order is entered for hearing on October 13, at 2:00 PM, at which time, the receiver shall submit a report
8 to determine if the terms of this order are being met. Until the continued hearing date, the Court is
9 limiting the Receiver's visits to the property at once per week. The moving papers do not adequately
10 address the frequency of the visits required, the length of the visits etc. Until the Court has more
11 information as to what exactly is involved in doing the environmental tests and monitoring or ensuring
12 their compliance, the Court is limiting the receivership's visits at this time due to the expense of the
13 receivership. The parties may address the issue receivership duties and frequency of visits to the
14 property at the hearing on the continued date.

15 DATED: SEP 10 2009

LOREN E. McMASTER
JUDGE OF THE SUPERIOR COURT

16 ORDER APPROVED AS TO FORM:

17 Dated: 9/9/09

LAW OFFICES OF WANLAND & SPAULDING

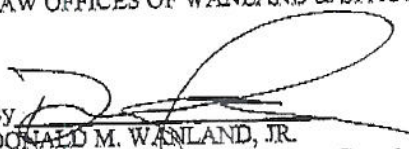
20 By 
21 DONALD M. WANLAND, JR.
22 Attorneys for Defendant and Cross-Complainants
23 FIVE STAR AUTO & TOWING, INC.,
24 ARMARJIT KAUR and JASMAIL SINGH
25
26
27
28

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE
MINUTE ORDER

Date: 08/05/2009

Time: 03:58:49 PM

Dept: 53

Judicial Officer Presiding: Judge Loren McMaster
Clerk: J. Hart

Bailiff/Court Attendant: None
ERM: None

Case Init. Date: 05/29/2009

Case No: 34-2009-00045260-CU-CO-GDS Case Title: Super Pallet Recycling Corporation vs. Five Star
Auto & Towing Inc

Case Category: Civil - Unlimited

Causal Document & Date Filed:

Appearances:

**Ruling on Submitted Matter (Motion for Appointment of Receiver and Preliminary Injunction)
Taken Under Submission June 29, 2009**

The Court has not considered the unsolicited letter from defendant's counsel dated July 30, 2009 which attaches an ALJ decision. However, the Court is continuing the matter for 30 days as set forth in Section D of the proposed order and the parties may submit supplemental briefs on the scope of the receiver's duties and scope of injunctive relief at that time.

At oral argument the parties addressed the tentative ruling and proposed red-lined order that was submitted by defendant at the hearing.

The Court is persuaded based on the evidence before it that the plaintiff has a probability of success on the merits. The defendant's declarations in support of their offset arguments are not supported by documentary evidence that would have accompanied agreements supporting the offset. The fact defendants have not previously sought rescission or damages of the agreement based on fraudulent inducement of the contract is telling.

Plaintiff requested modification of the tentative ruling as set forth in the proposed red-lined order. Plaintiff wanted to add the "shall negotiate" language regarding the tax issue. The Court agrees with defendant that such language is not feasible since the Court cannot order the County to negotiate an agreement. Instead, the defendant is ordered to take all steps required to bring its tax liability current, and shall commence such steps within 30 days of the date the formal order is signed.

The parties disagree as to who is to pay for the receiver. This issue was not fully addressed at the hearing. The proposed red-lined order seeks to put the burden entirely on the defendant. However, since the plaintiff still appears to bear some responsibility for complying with the environmental laws as a prior owner, and the purpose of the receiver is to ensure compliance with the environmental laws, the Court will require the parties to pay equally for the receiver, and each shall deposit \$10,000 into an account with the Court. (language at page 5 no. 2 of the red-lined proposed order may be included in the formal order).

Date: 08/05/2009

MINUTE ORDER

Page: 1

Dept: 53

Calendar No.:

The Court has determined that the receiver bond shall remain at \$50,000, but the preliminary injunction bond shall be raised to \$100,000.

The Court appoints Mark Len as the receiver. The Court ordered at the hearing that plaintiff provide the resume of the receiver to the defendant. The receiver is ordinarily nominated in the moving papers. If the defendant objects to this receiver, defendant may object in conjunction with the continued hearing.

The Court now determines that defendant shall make the payments due under the note and trust deed to the plaintiff rather than the blocked account.

The Court will include the section "D Further Order" proposed by defendant. The matter shall be set for hearing approximately 30 days from the date of signing of the formal order. At that continued hearing the receiver shall submit a report to determine if the terms of this order are being met.

Until the continued hearing date, the Court is limiting the Receivers visits to the property at once per week. The moving papers do not adequately address the frequency of the visits required, the length of the visits etc. Until the Court has more information as to what exactly is involved in doing the environmental tests and monitoring or ensuring their compliance, the Court is limiting the receivership's visits at this time due to the expense of the receivership. The parties may address the issue receivership duties and frequency of visits to the property at the hearing on the continued date.

Plaintiff to prepare a formal order pursuant to CRC 3. 1312.

Declaration of Mailing

I hereby certify that I am not a party to the within action and that I deposited a copy of this document in sealed envelopes with first class postage prepaid, addressed to each party or the attorney of record in the U.S. Mail at 720 Ninth Street, Sacramento, California.

Dated: August 6, 2009
J. Hart, Deputy Clerk /s/ J. Hart

Patrick T. Markham
Jacobson Markham, LLP
8950 Cal Center Drive, Suite 210
Sacramento, CA 95826

Donald M. Wanland, Jr.
Law Offices of Wanland & Spaulding
705 University Avenue
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Porter Scott
350 University Avenue, Suite 200
Sacramento, CA 95825
Fax No. (916) 854-5965 Fax No. (916) 927-3706

1 Case: **Dixon Pit Landfill**

2 Court: BEFORE THE COUNTY OF SACRAMENTO, ENVIRONMENTAL MANAGEMENT DEPARTMENT
3 STATE OF CALIFORNIA, OAH No. 2008100665

4 **PROOF OF SERVICE**

5 I am employed in the County of Sacramento, State of California. I am over the age of 18 and not
6 a party to the within action; my business address is 8950 Cal Center Drive, Suite 210, Sacramento, California
7 95826-3228. On **October 26, 2009** I served the foregoing document(s) described as:

8 by placing the original or a true copy thereof enclosed in sealed envelopes addressed as follows:

- 9 • **SUPER PALLET RECYCLING CORPORATION'S BRIEF ON APPEAL TO
10 CALIFORNIA WASTE MANAGEMENT BOARD (PRC 45030)**

11 John Reed
12 OFFICE OF THE COUNTY COUNSEL
13 700 H Street, Suite 2650
14 Sacramento, CA 95814
15 (by U.S. Mail)

16 Steven Levine
17 California Integrated Waste Management Board
18 1001 I Street, 23rd Floor
19 Sacramento, CA 95814
20 (by personal service)

21 ☐ **BY OVERNIGHT DELIVERY**

22 by placing the document(s) listed above in a sealed, fully prepared envelope and causing such envelope
23 to be delivered by Federal Express Overnight Delivery to the parties listed above. (CCP sections 1013
24 and 1013(a), *et seq.*)

25 ☐ **BY FACSIMILE**

26 by transmitting via facsimile the above listed document(s) to the fax number(s) set forth above
27 on this date before 5:00 p.m.

28 ☒ **BY PERSONAL SERVICE**

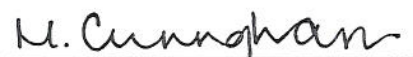
by causing personal delivery of the document(s) listed above to the office of the person(s) listed
at the address(es) set forth above.

☒ **BY MAIL**

I am "readily familiar" with the firm's practice of collection and processing correspondence for
mailing. Under that practice it would be deposited with the U.S. postal service on that same day
with postage thereon fully prepaid at Sacramento, California in the ordinary course of business.
I am aware that on motion of the party served, service is presumed invalid if postal cancellation
date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on **October 26, 2009** at Sacramento, California.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.


MELISSA R. CUNNINGHAM